

FILED
2019 MAY -2 PM 4:07
AMY J. HINLEY
CLERK OF SUPERIOR COURT
BY: [Signature]

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Attorney for the State of Arizona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,)	Case No. CR201800253
)	
Plaintiff,)	JUDGE JAMES L. CONLOGUE,
)	DIVISION FIVE
vs.)	
)	
JEFFREY ROSS WELCH,)	STATE'S OBJECTION TO
)	DEFENDANT'S MOTION TO
Defendant.)	CONTINUE
)	

COMES NOW the State of Arizona, through the Cochise County Attorney, BRIAN M. McINTYRE, and SARA V. RANSOM, his Deputy, hereby opposes Defendant Jeffrey Welch's ("Defendant") Motion to Continue Trial. The Motion is based on inaccurate claims of counsel, who has admittedly utilized his investigator to make public records request to the civil department of the Cochise County Attorney's Office without disclosing that he was acting for the Defendant in an on-going criminal litigation.¹ Under these circumstances, defense counsel's

¹ As the State's on-going criminal investigation file included visual depictions of the victim, and involved a minor victim of a sex offense, the State properly refused to provide documents to the requestor on grounds of privacy, confidentiality and the best interests of the State. *See, e.g., A.H. Belo Corp. v. Mesa Police Dep't*, 202 Ariz. 184, 188, 42 P.3d 615, 619 (Ct. App. 2002); A.R.S. §§ 39-121.04, 39-123.01. Had the County known that the request was being made at the direction of defense counsel, it would have further noted that disclosure was not warranted as the documents were already within counsel's possession.

1 conduct is improper, and the State's refusal to produce the documents was appropriate. *Hodai v.*
2 *City of Tucson*, 239 Ariz. 34, 42, 365 P.3d 959, 967 (Ct. App. 2016) (reports related to on-going
3 investigation were properly withheld from disclosure where the ongoing investigation was
4 "sensitive" and "any release of records from that would jeopardize the investigation."). The fact
5 that the request was being made by a party to a pending criminal case should, at a minimum,
6 have been made clear to the State so the parties could, if necessary, submit documents to this
7 Court for *in camera* review.

8 The improper conduct of defense counsel and their investigator notwithstanding, the
9 claim of disclosure issues warranting a continuance is specious. Indeed, the State was unaware
10 that Defendant claimed any alleged disclosure issues until this filing, and Defendant's
11 investigator—via the State's disclosures in this criminal prosecution—is in possession of the
12 documents he was requesting in defense counsel's improper attempt to circumvent the Arizona
13 Rules of Criminal Procedure.

14 The State is additionally concerned by the inaccurate claims of Defendant regarding the
15 State's response to a correspondence from the defense dated March 2019. In fact, defense
16 counsel knew at the time of filing its Motion that the delay in response was due to counsel's trial
17 schedule, and further knew that the State responded to their correspondence by April 22. *See*
18 April 17, 2019 e-mail from S. Ransom to R. Ellinwood, attached as Exhibit 1.

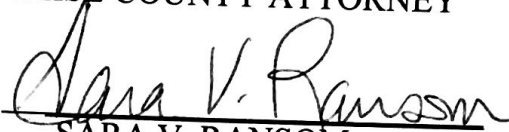
19 With the actual state of the record corrected, it is apparent that this filing is but another in
20 a series of unfortunate, and improper, tactics by defense counsel geared at nothing more than
21 fabricating issues that do not exist. Although the State is dismissing this matter without
22 prejudice, it is concerned that counsel for Defendant, who appears in other matters in Cochise
23 County, will continue with these unfortunate and unacceptable practices. The State therefore
24 prepared a response to this Motion to ensure that a record of this misconduct exists and is
25 addressed. The State asks that the Court admonish counsel for Defendant that seeking public

1 records without disclosing the intended use of such records in criminal prosecution and omitting
2 facts known to counsel in filings with the Court will not be tolerated.

3 RESPECTFULLY SUBMITTED this 2nd day of May 2019.

4
5 COCHISE COUNTY ATTORNEY

6 By:



7 SARA V. RANSOM

8 Deputy County Attorney

9 Original filed this 2nd day of May, 2019 with the Cochise County Clerk of the Court.

10 Copies of the foregoing mailed/delivered this 2nd day of May 2019, to:

11 Hon. James L. Conlogue,
12 Judge of the Superior Court, Division 5
13 *Via Clerk's Office distribution*

14 Ralph Ellinwood, Esq.
15 P.O. Box 40158
16 Tucson, AZ 85717

17 and
18 Richard Lougee, Esq.
19 P.O. Box 43505
20 Tucson, AZ 85733
21 Attorneys for Defendant
22 *Via Postal Mail*

EXHIBIT 1

From: Ransom, Sara
To: Gonzales, Dawn
Subject: FW: Welch Case
Date: Tuesday, April 30, 2019 9:58:39 AM

Exhibit 1

From: Ralph Ellinwood <ree@yourbestdefense.com>
Sent: Wednesday, April 17, 2019 11:58 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Cc: Richard Lougee <rick@lougeelaw.com>
Subject: Re: Welch Case

I am aware of the Copeland trial. The letter was sent by US Mail.

From: Ransom, Sara <SRansom@cochise.az.gov>
Sent: Wednesday, April 17, 2019 11:56:37 AM
To: Ralph Ellinwood
Cc: Richard Lougee
Subject: RE: Welch Case

Mr. Ellinwood,

I am not certain if you emailed the letter. If not, then you were perhaps unaware (despite being *Knapp* counsel on one of the trials), that I have been in trials for the past 8 weeks. I assure you your letter is in the stack of urgent matters to address and I anticipate you will hear from me on or before April 22.

Regards,

Sara Ransom

Sara V. Ransom
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From: Ralph Ellinwood <ree@yourbestdefense.com>

Sent: Wednesday, April 17, 2019 11:52 AM
To: Ransom, Sara <SRansom@cochise.az.gov>
Cc: Richard Lougee <rick@lougeelaw.com>
Subject: Welch Case

Sara:

We have received no response to Rick Lougee's letter to you of March 7, 2019. We are left not knowing if you will dismiss this case. We need to know. If we do not hear from you by Monday April 22nd we will be filing a Motion to Dismiss 12.9 nunc pro tunc and a Motion to Continue Trial. There is considerable work to be done, disclosure not yet provided and witness logistics to be resolved.
Ralph